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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,979	11/14/2003	Robert L. Smith	12361/223	7498
757	7590	02/17/2006	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 02/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/706,979	<b>Applicant(s)</b> SMITH ET AL.	
	<b>Examiner</b> CARL D. PRICE	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>03/14/05, 05/10/05</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### **Information Disclosure Statement**

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the walls" in line 3.

Claim 1 recites the limitation "the cooking cavity" in line 3.

Claim 1 recites the limitation "said back wall" in lines 8 and 9.

Claim 1 recites the limitation "said plate" in line 13.

Claim 4 recites the limitation "said back wall" in line 1.

Claim 8 recites the limitation "the maximum heat energy" in line 2.

There is insufficient antecedent basis for this limitation in the claim.

Also, in claim 1, line 9, the recitation "said fan mounting an internal concave plate on one side adjacent the port in said back wall" is vague since it is unclear with what the term "one side" is associated. Does applicant intend to claim - - an internal cavity plate mounted on one side of said fan and the internal cavity plate being positioned adjacent the port in said back wall"?

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**Claims: Rejected under 35 U.S.C. 102()**

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1, 2, 5, 7, and 10: Rejected under 35 U.S.C. 103(a)**

Claims 1, 2, 5, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US005601070 (Hotard et al) in view of US005497760A (Alden et al) and US004395233 (Smith et al).

US005601070 (Hotard et al) shows and discloses a convection oven including:

- an insulated housing (12);
- a liner formed as oven cavity or box having rear (26), side walls (22, 24) and a top (20) and a bottom wall (18), the rear wall having a port (not referenced - see column 4, lines 48-50; "*The combustion products enter the blower compartment 64 via an oversized opening surrounding the shaft of the blower fan motor 52.*")
- a plurality of gas burners (40; see column 3, lines 26-31 – "*One or more heating elements heat the air in the inlet air passageway 30 before the air is introduced into the oven chamber 14. Any conventional heating element may be used.*")

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disposed in a pathway (30, 34) defined between the housing and the liner for expelling hot products of combustion into the space between the liner and housing (see column 4, lines 46-48; *"Combustion products are also drawn by the blower fan 50 from the flue chamber 34 into the blower compartment 64"*);

- a squirrel cage fan (50) mounted within the liner across the port in the back wall;
- baffle and guard assembly including a plate (62) having a circular opening (74) disposed in front of the fan and the opening being coaxially with the fan and a four diverter plates (90), two of which are disposed at about two and eight o'clock around opening in the plate, extending from the plate toward the liner back wall (see column 6, 16-19); *"In yet another embodiment (not shown), the diverter plates 90, 92 may be secured to a rear surface of the baffle plate 62.)* and covering only a portion of the circumference of the fan whereby heated air passing through the port and through the opening will be mixed and expelled by the fan into the cooking cavity;
- the plate opening has a guard (note figure 2 showing plate (82) with three guards (not referenced) extending across port (74));

**US005601070 (Hotard et al)** shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the fan mounting an internal concave plate ( ) on one side adjacent the port in the back wall; and
- the burner(s) being four in number or at least one in-shot burner.

**US005497760A (Alden et al)** teaches, from applicant's same convection oven field of endeavor, using an oven air circulating fan of the type having an internal concave plate (18) and using four in-shot burners (14) as the heat source.

In regard to claims 1, 2, 5, 7 and 10, for the purpose of providing a suitable alternative fan, it would have been obvious to a person having ordinary skill in the art at the time of

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applicant's invention to substitute, for the **US005601070 (Hotard et al)** fan, a fan of the type having an internal concave plate and for the purpose for providing a convention alternative heat source to substitute four in-shot burners for the burners of **US005601070 (Hotard et al)**, in view of the teaching of **US005497760A (Alden et al)**.

**Claims 3, 4, and 6: Rejected under 35 U.S.C. 103(a)**

Claims 3, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US005601070 (Hotard et al)** in view of **US005497760A (Alden et al)**, as applied to claim 1 above, and further in view of **US004395233 (Smith et al)**.

**US005601070 (Hotard et al)** shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the port guard being formed as a “mesh”;
- the pathway extending around the space between side walls
- the plates being no more than about three inches across; and
- a burner control for selectively changing the maximum heat energy of the combustion from a first to a second value, wherein the first value is 60,000 BTUS and the second value is 80,000 BTUS.

**US004395233 (Smith et al)** teaches, from applicant's same convection oven field of endeavor, forming a convection oven and liner with a space therebetween between the pathway extending around the space between top, rear and side walls (66) whereby when products of combustion circulate through the pathway heating the liner walls to generate radiant heat in the cavity.

In regard to claims 3, to permit products of combustion to heat all liner walls to generate radiant heat in the cavity, it would have been obvious to a person having ordinary skill in the art

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to modify **US005601070 (Hotard et al)** to also include side pathways, in view of the teaching of **US004395233 (Smith et al)**.

In regard to claim 4, Official Notice is taken that it is well known to form blower port guards in the form of a “mesh” or screen. Thus, in view of that which is well known into the convection oven field of endeavor and for the purpose of providing a suitable guard arrangement for the fan port wherein the opening in the plate has a mesh guard (e.g. - **GB002109920** cited on the attached USPTO form 948).

In regard to claim 6, since the plate spacing would necessarily depend on numerous design parameters such as characteristics of the material(s) being heated in the oven, the overall size and shape of the oven, etc. to arrange the plates to be no more than about three inches across can be viewed as nothing more than mere matters of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

**Claims 8 and 9 are rejected under 35 U.S.C. 103(a)**

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US005601070 (Hotard et al)** in view of **US005497760A (Alden et al)** and **US004395233 (Smith et al)**, as applied to claim 7 above, and further in view of **US003963410 (Baysinger et al)**.

**US003963410 (Baysinger et al)** teaches, from applicant's same oven field of endeavor, providing a combustion burner heated oven with a control system having an economical temperature variable resistance means for cyclically operating the main burner in a manner to maintain various selected oven temperatures.



In regard to claim 8, for the purpose of providing varying degrees of heat during oven operation, it would have been obvious to a person having ordinary skill in the art to modify the combustor of **US005601070 (Hotard et al)** to include combustion control capable of changing the maximum heat energy of the combustion from a first to a second value, in view of the teaching of **US003963410 (Baysinger et al)**.

In regard to claim 9, since the amount of heat energy emitted during various combustor settings would necessarily depend on numerous design parameters such as characteristics of the material(s) being heated in the oven, the overall size and shape of the oven, etc. to operate the maximum heat energy of the combustion from a first to a second value, wherein the first value is 60,000 BTUS and the second value is 80,000 BTUS, can be viewed as nothing more than mere matters of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

### **Conclusion**

See the attached USPTO form 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

### **USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized, flowing script.

CARL D. PRICE  
Primary Examiner  
Art Unit 3749

cp